

WEDNESDAY, NOVEMBER 28, 2001

The Board met at its offices at 450 N Street, Sacramento, at 10:05 a.m. with Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 10:06 a.m. and reconvened immediately in closed session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation, Revenue and Taxation Codes 7093.5, 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 11:00 a.m. and reconvened immediately in open session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARINGS**

Yamaha Motor Corporation, USA, 89002467500

1989, \$ 3,593.00 Assessment

1990, \$229,623.00 Assessment

1991, \$ 9,038.00 Assessment

For Appellant:

Edwin L. Norris, Attorney

For Franchise Tax Board:

Tommy Leung, Tax Counsel

Larry Bobiles, Tax Counsel

Pentel of America, Ltd., 89002464880

1989, \$409,815.00 Assessment

For Appellant:

Jess Penilla, Attorney

Ernie Dronenburg, Representative

For Franchise Tax Board:

Tommy Leung, Tax Counsel

Larry Bobiles, Tax Counsel

Appellant's Exhibit:

Letter to Franchise Tax Board (Exhibit 11.10)

Respondent's Exhibit:

Rehearing Exhibits (Exhibit 11.11)

Rehearing Exhibits (Exhibit 11.12)

WEDNESDAY, NOVEMBER 28, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No non-disqualifying contribution disclosed.

Issue: Whether, and if so to what extent, appellant must recognize (upon the sale of inventory outside the unitary group) inter-company inventory gains realized by foreign-based members of appellant's worldwide combined reporting group following appellant's water's-edge election and the subsequent disaffiliation of the worldwide combined reporting group.

Action: Mr. Andal moved to adopt staff proposal number two. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Mr. Klehs made a substitute motion to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel but failed to carry, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish, Mr. Chiang and Mr. Andal voting no.

The Board deferred consideration of this matter.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell present.

Exhibits to these minutes are incorporated by reference.

## **CHIEF COUNSEL MATTERS**

Larry Augusta, Assistant Chief Counsel, Property Taxes Section, Legal Division, made introductory remarks regarding Rule 905, Assessment Electric Generation Facilities.

Speakers: Jim Maples, Assessor/Recorder of Kern County  
Debbie Fountain, Housing & Redevelopment Director, City of Carlsbad  
Eric Haagenon, Chief Appraiser, Los Angeles County  
John Fujii, Deputy City Attorney, City of Huntington Beach  
Greg Turner, General Counsel, California Taxpayers' Association  
Chris Micheli, Carpenter Snodgrass & Associates

Upon motion of Dr. Connell, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Andal voting no, Mr. Parrish abstaining, the Board adopted Rule 905, Assessment Electric Generation Facilities as amended (Exhibit 11.13).

WEDNESDAY, NOVEMBER 28, 2001

## **ADMINISTRATIVE SESSION**

Ms. Mandel entered the Boardroom on behalf of Dr. Connell in accordance with Government Code Section 7.9.

## **GOVERNMENT CLAIMS BOARD RECOMMENDATION IN APPEAL OF JACK GEOZIAN**

Upon motion of Mr. Chiang, seconded by Mr. Klehs and duly carried, Mr. Parrish, Mr. Chiang and Mr. Klehs voting yes, Mr. Andal and Ms. Mandel voting no, the Board directed staff to send a letter to the California Victims Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer, Mr. Jack Geozian, and any similarly situated taxpayers who did not receive notice (Example 11.14).

Speakers: Jack Geozian  
Rosalie Corley

## **CORPORATE FRANCHISE AND INCOME TAXES HEARINGS**

Timothy Kelly, 102706  
1994, \$582.00 Claims for Refund  
For Appellant:

Timothy Kelly  
David Kelly, CPA  
Joann Garcia, Tax Counsel  
Craig Scott, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant's claim for refund was filed prior to expiration of the applicable statute of limitations.

Appellant's Exhibit: 1997 CA Tax Handbook, Page 607 (Exhibit 11.15)

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the appeal be submitted for decision.

WEDNESDAY, NOVEMBER 28, 2001

Marion Butts, 92189

1988, \$54,626.00 Assessment

1989, \$ 916.00 Assessment

For Appellant:

John A. Runte, Attorney

Karrie L. Bercik Witness

For Franchise Tax Board:

Kent Summers, Tax, Counsel

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant must recognize taxable gain from the disposition of her interest in a general partnership.

Appellant's Exhibit: Declaration of Marion Butts (Exhibit 11.16)  
Credential of Karrie Bercik (Exhibit 11.17)

Action: Upon motion of Mr. Andal, seconded by Mr. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the appeal be submitted for decision.

Larry and Kate Mone, 100635

1989, \$7,345.12 Claim for Refund

1990, \$6,361.98 Claim for Refund

1991, \$5,404.71 Claim for Refund

1992, \$5,467.86 Claim for Refund

1993, \$4,423.90 Claim for Refund

1994, \$3,553.06 Claim for Refund

1995, \$3,024.34 Claim for Refund

1996, \$1,548.75 Claim for Refund

1997, \$ 882.34 Claim for Refund

1998, \$ 172.96 Claim for Refund

For Appellant:

Eugene O'Sullivan, CPA

For Franchise Tax Board:

Christie Mitchell, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellants have shown that respondent improperly denied their request to abate interest.

Respondent's Exhibit: Statement Attached to Appellants' CA Form 540  
(Exhibit 11.18)

WEDNESDAY, NOVEMBER 28, 2001

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the appeal be denied, directing staff to assist the appellant in filing a claim with the California Victims Compensation and Government Claims Board.

Arthur L. and G. Arleen Valdez, 104908  
1981, \$1,00 or more Claim for Refund

For Appellant:

Arthur L. Valdez  
Arleen Valdez

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellants have shown they are entitled to abatement of interest.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Khosrow and Turan M. Ghadiri, 94729

1986, \$28,700.00 Assessment, \$ 7,175.00 Penalty, Delinquent Filing

\$26,582.88 Penalty, Negligence

1987, \$17,594.00 Assessment, \$ 4,398.50 Penalty, Delinquent Filing

\$14,173.10 Penalty, Negligence

1988, \$12,039.00 Assessment, \$ 3,009.75 Penalty, Delinquent Filing

\$ 601.95 Penalty, Negligence

For Appellant:

Khosrow Ghadiri  
John D. Teter, Attorney

For Franchise Tax Board:

Jack Stilwell, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellants have shown that respondent improperly made an assessment based upon a federal adjustment.

Whether appellants have shown that respondent improperly imposed penalties for delinquent filing and negligence.

WEDNESDAY, NOVEMBER 28, 2001

Appellant's Exhibit: 1986 Maple Press Expenses (Exhibit 11.19)  
Deposit to Print Technology (Exhibit 11.20)  
Summary of Deposits 1988 (Exhibit 11.21)  
Received Loans (Exhibit 11.22)  
Third Party Loan Received to Print Technology  
(Exhibit 11.23)

Respondent's Exhibit: SBE Report of Adjustments (Exhibit 11.24)  
Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously  
carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the  
Board ordered that the appeal be submitted for decision for 90 days, granting the  
Franchise Tax Board time to review additional information submitted by the appellant  
and the Appeals Section to return the matter to the Board with a final recommendation.

Orville L. Roache, 97699

1998, \$1,916.00 Assessment, \$479.00 Penalty, Late Filing

For Appellant: Orville L. Roache

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions  
were disclosed.

Issues: Whether appellant's California income is subject to California's tax laws.

Whether appellant has maintained a frivolous or groundless position  
before this Board.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 11.25)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously  
carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the  
Board ordered that the appeal be submitted for decision.

Dee Baird, 60036

1994, \$601.00 Assessment, \$150.25 Penalty, Late Filing

\$120.20 Penalty, Accuracy

1997, \$673.00 Assessment, \$168.25 Penalty, Late Filing

\$168.25 Penalty, Notice & Demand

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Action: The Board took no action

WEDNESDAY, NOVEMBER 28, 2001

**FINAL ACTION ON APPEALS HEARD NOVEMBER 28, 2001**

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no, the Board adopted alternative two as recommended by the Appeals Section in the appeals of *Yamaha Motor Corporation, USA, 89002467500*, and *Pentel of America, Ltd., 89002464880*.

Mr. Andal moved to publish a memorandum opinion in the appeals of *Yamaha Motor Corporation, USA, 89002467500*, and *Pentel of America, Ltd., 89002464880*. The motion was seconded by Mr. Parrish, but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

**PUBLIC HEARINGS**

**BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS**

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings.

Speakers: Joseph Micallef, Associated Sales Tax Consultants  
National Medical Care  
Kai Mickey, Premier Sales & Use Tax Consultants  
Abe Golomb, Associated Sales Tax Consultants  
Richard Dewberry, Bewley, Lassleben, Miller  
Mark Bendick

**CHIEF COUNSEL MATTERS**

Larry Augusta, Assistant Chief Counsel, Property Taxes Section, Legal Division, made introductory remarks regarding Emergency Rule 138, Exception of Aircraft Being Repaired, Overhauled, Modified or Serviced.

Speakers: Herman Dickson, Acting Chair, California Assessors' Association Aircraft Subcommittee  
Eric Miethke, Partner, Nielsen, Merksamer  
Beth Hansen, Lobbyist, California Taxpayers' Association  
Greg Turner, General Counsel, California Taxpayers' Association

WEDNESDAY, NOVEMBER 28, 2001

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted Emergency Rule 138, Exception of Aircraft Being Repaired, Overhauled, Modified or Serviced (Exhibit 11.26).

Larry Augusta, Assistant Chief Counsel, Property Taxes Section, Legal Division, made introductory remarks regarding Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469.

Speakers: Terry Ryan, Director State Taxes, Apple Computer, Inc.  
William Harris, AEA  
Eric Haagenson, Chief Appraiser, Los Angeles County  
Afite Assad, Los Angeles County  
Thomas Parker, Deputy County Counsel, El Dorado County  
Marcy Berkrian, Deputy County Counsel, Santa Clara County  
John McKibben, California Association of Clerks & Election Officials  
Greg Turner, General Counsel, California Taxpayers Association

Upon motion of Mr. Andal, seconded by Ms. Mandel and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang absent, the Board adopted Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469 as amended (Exhibit 11.27).

Janice Thurston, Assistant Chief Counsel, Business Tax Section, Legal Division, made introductory remarks regarding Regulation 1525.2, Manufacturing Equipment.

Speaker: Chris Micheli, Carpenter, Snodgrass & Associates

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the Section 100 change to Regulation 1525.2, Manufacturing Equipment (Exhibit 11.28).

Janice Thurston, Assistant Chief Counsel, Business Tax Section, Legal Division, made introductory remarks regarding Regulation 1532, Teleproduction or Other Postproduction Service.



WEDNESDAY, NOVEMBER 28, 2001

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted a Section 100 change to Regulation 1532, Teleproduction or Other Postproduction Service (Exhibit 11.29).

### **PROPERTY TAXES HEARINGS**

Southern California Edison Company (148), SAU 01-049; 133642

2001, \$8,727,100,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property Taxes Department:

Robert Lambert, Counsel

Action: The Board took no action.

All American Pipeline L.P. (465), SAU 01-024; 130880

2001, \$96,600,000.00 Unitary Value

For Petitioner:

Peter Michaels, Attorney

For Property Tax Department:

Ken McManigal, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Mr. Klehs voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the petition be submitted for decision.

Broadwing Communications (7633), SAU 01-046; 132001

2001, \$111,700,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property Tax Department:

Mary Ann Alonzo, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Andal and Mr. Klehs voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, Mr. Chiang absent, the Board approved the revised staff recommendation.

WEDNESDAY, NOVEMBER 28, 2001

Genuity Solutions, Inc. (7733), SAU 01-051; 133647

2001, \$265,000,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property Tax Department:

Kristine Cazadd, Counsel

Action: The Board took no action.

mPower Communications Corp. (7724), SAU 01-040; 131828

2001, \$81,300,000.00 Unitary Value

For Petitioner:

Peter W. Hladek, Senior Manager

Chris Zamora, Senior Manager

For Property Tax Department:

Anthony Epolite, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether Construction Work in Process costs reported by Petitioner and assessed by staff were improperly assessed because such costs included property not owned, leased, managed, or controlled by Petitioner and property not in California as of the lien date.

Whether co-location fee costs reported by petitioner were improperly included in the assessment because such costs have already been assessed to the lessor of the property.

Whether the cost of switching equipment reported by Petitioner was improperly included in the assessment because Petitioner did not hold title to nor possess this equipment as of the lien date.

Whether assets related to Petitioner's telephony operations were improperly included in the assessment because Petitioner discontinued these operations in California.

Whether peripheral electronics equipment was included in the assessment as such assets were not previously reported by Petitioner.

Whether switching equipment costs reported by Petitioner were improperly assessed because such costs included exempt application software.

Whether staff improperly valued Petitioner's property by not including an adjustment for economic or functional obsolescence.

Whether the cost of switching and peripheral equipment was improperly assessed because the useful life of such equipment has decreased.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the petition be granted as to issue 3.

WEDNESDAY, NOVEMBER 28, 2001

Mr. Andal moved to reduce the assessment cost of switching equipment by 15 percent. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang and Mr. Klehs voting no, Ms. Mandel not participating in accordance with Government Code Section 7.9.

Mr. Andal moved to accept staff recommendation on the remaining issues. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Klehs and Mr. Andal voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code Section 7.9.

PaeTec Communications, Inc., (7814), SAU 01-017; 130869

2001, \$5,870,000.00 Unitary Value

For Petitioner:

Hearing Request Withdrawn

For Property Tax Department:

Robert Lambert, Counsel

Action: The Board took no action.

Seren Innovations, Inc. (7832), SAU 01-028; 131268

2001, \$112,200,000.00 Unitary Value

\$ 11,220,000.00 Penalty, Late Filing

For Petitioner:

Hearing Request Withdrawn

For Property Tax Department:

Anthony Epolite, Counsel

Action: The Board took no action.

**PROPERTY TAX HEARINGS – APPLICATIONS FOR REVIEW,  
EQUALIZATION AND ADJUSTMENT OF ASSESSMENTS**

Northern California Power Agency, ARA 99-001; 19387

Northern California Power Agency, ARA 99-002; 27694

1998, \$33,027,593.00 County Assessed Value

1999, \$33,688,145.00 County Assessed Value

For Applicant:

Peter Michaels, Attorney

Clayton Clement, Attorney for Applicant

For County:

Brett L. Price, Attorney for Sonoma County

For Property Tax Department:

Robert Lambert, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

WEDNESDAY, NOVEMBER 28, 2001

Issues: Whether or not the Settlement Agreement between the applicant and the respondent county – and the judgement entered in the related validation action – preclude the assessment of the Steamfield Improvements at the lesser of factored base year value or fair market value.

If the Settlement Agreement does not so preclude the assessment of the Steamfield Improvements at the lesser of factored base year value or fair market value, what is the fair market value of the Steamfield Improvements?

Whether or not the Settlement Agreement converts the applicant's personality included in the Steamfield system into taxable property.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board determined that fair market value is the proper assessment test.

Mr. Andal moved to take the matter under submission, granting the Property Tax Department 30 days to evaluate the appraisals and return to the Board with a final recommendation. The motion was seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Mr. Klehs voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9.

### **BUSINESS TAXES APPEALS HEARINGS**

Kimarie Richardson, SR JHE 97-217274; 79795

1-1-98 to 12-31-99, \$4,295.00 Tax

For Petitioner:

Kimarie Richardson

Rob Phillips

For Sales and Use Tax Department:

David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner's "session fee" charge is for a nontaxable service, or a taxable charge for service in connection with the sale of tangible personal property.

Whether petitioner received and relied on erroneous advice from a Board employee and is entitled to relief pursuant to Revenue and Taxation Code section 6596.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, and Mr. Andal voting yes, Ms. Mandel abstaining, the Board ordered that the petition be redetermined with adjustments.

WEDNESDAY, NOVEMBER 28, 2001

Progressive Auto Stereo Inc., SR Y CHA 21-818332; 15211

7-1-93 to 6-30-96, \$44,286.14 Tax

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that the audited amount of purchases subject to use tax are excessive.

Whether the additional taxable sales are excessive.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Jasbir S. & Bhupinder K. Grewal, SR ARF 99-408622; 89002239080

7-1-94 to 6-30-97, \$11,766.06 Tax, \$00.00 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that audited taxable sales were computed in accordance with the facts.

Whether the audit allowance for bad debts was computed in accordance with the facts.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Crane, Borkenhagen, Enterprises, Inc., SR GH 99-590401; 30686

10-1-95 to 9-30-98, \$62,378.55 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

WEDNESDAY, NOVEMBER 28, 2001

**FINAL ACTION ON APPEALS HEARD NOVEMBER 28, 2001**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be sustained in the appeal of *Timothy Kelly, 102706*.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be sustained in the appeal of *Marion Butts, 92189*.

Upon motion of Mr. Klehs, and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the appeal of *Arthur L. and G. Arleen Valdez, 104908*, be denied, sustaining the action of the Franchise Tax Board and encouraged the appellant to pursue an offer in compromise with the Franchise Tax Board.

Mr. Andal stated for the record he would like to change his vote to an abstention in the appeal of *Arthur L. and G. Arleen Valdez, 104908*.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be sustained and imposed a \$1,000 frivolous appeal penalty in the appeal of *Orville L. Roache, 97699*.

The Board adjourned at 5:40 p. m.

*The foregoing minutes are adopted by the Board on February 6, 2002.*